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April 14, 2023

Via ECF

Hon. Jesse Furman
Thurgood Marshall United States Courthouse, Courtroom 1105
40 Foley Square
New York, NY 10007

Re: Letter Motion For A Pre-Motion Discovery Conference Under Local Rule 37.2

*Lead Creation Inc. v. P'ship & Unincorporated Ass'ns Identified on Schedule "A", No.
1:22-cv-10377*

Dear Judge Furman:

Defendants respectfully request a pre-motion conference with the Court—as required under the Court’s Local Rule 37.2 and your Honor’s Individual Practice 3(E)—for the reasons explained below, recognizing, however, for the reasons also given below that it is very unlikely that the adverse parties will appear for the conference.

The Court Order dated March 29, 2023 (ECF No. 148) ordered Plaintiff and its sole shareholder and Chairman Xiaodong Fan (including the alleged alter ego Justin Lewis), as well as its former counsel Mr. Hurkes, to produce documents requested by Defendants within seven days and to appear for Zoom depositions five days thereafter. Such Court Order and Defendants’ motion to compel (ECF No. 145) were properly served on Plaintiff Lead Creation Inc., as well as on Xiaodong Fan and Justin Lewis via both email and mail. (ECF No. 153-55) The three email addresses used for service purpose, patent@leadcreationinc.com, copyright@leadcreationinc.com, and linxinrong2005@gmail.com were provided by Plaintiff’s then-counsel Mr. Hurkes in his declaration (ECF No. 142 ¶5). The mails were delivered to Plaintiff’s registered agents in both Delaware, where Plaintiff was incorporated, and Florida, where Plaintiff has maintained its principal place of business since February of this year. Incidentally, Plaintiff’s registered agent in Florida is still Mr. Hurkes.

Neither Plaintiff nor its sole shareholder and CEO Xiaodong Fan (or his alleged alter ego Chairman Justin Lewis) has produced any document to Defendants within the seven-day period set by the Court Order, nor has there been any production by any of them, or response from any of them of any kind, since that time.

Counsel for Defendants had also sent Deposition Notices and Subpoenas to Mr. Hurkes, as well as to Plaintiff Lead Creations Inc., Xiaodong Fan and Justin Lewis via email on March 31,

2023. Upon learning about another email address leadcreationinc@yahoo.com belonging to Plaintiff, Counsel for Defendants immediately sent the Deposition Notice and Subpoena to that email address on April 6, 2023.

On April 10, 2023 when all the depositions were scheduled to be taken, only Mr. Hurckes appeared. None of Plaintiff, Xiaodong Fan, or Justin Lewis appeared for deposition on April 10. Counsel for Defendants and the court reporter kept the Zoom videoconference open throughout the day on April 10 and waited online until one hour past the last scheduled deposition, to give deponents a fair and ample opportunity to appear.

So far, none of Plaintiff, Xiaodong Fan or Justin Lewis had offered any explanation for their failure to appear for deposition. In fact, Counsel for Defendants has never heard anything from Plaintiff, Xiaodong Fan or Justin Lewis ever.

In light of Plaintiff's, Xiaodong Fan's and Justin Lewis' blatant violation of the Court Order dated March 29, 2023 (ECF No. 148), Defendants intend to move the Court to sanction Plaintiff and its sole owner/principal officer Xiaodong Fan and alleged alter ego Justin Lewis for disobeying the Court's discovery order pursuant to Fed. R. Civ. P. 37(b)(2) and such other relief as is available under that provision as the Defendants plan to request in their motion papers on this subject and as the Court may deem just and proper.

Therefore, Defendants respectfully request a pre-motion conference with the Court, pursuant to Local Rule 37.2, before making the motion referenced above under Fed. R. Civ. P. 37(b). However, Counsel for Defendants respectfully submits that there was no one to confer and meet with, as required by your Honor's Individual Practices Rule 3(E), before filing this letter motion for conference, in light of Plaintiff's, Xiaodong Fan's and Justin Lewis' complete disappearance from this action as witnessed by its failure to file an answering brief on Defendants' motions to recover against the TRO bond and for attorneys' fees and expenses and their failure to produce any documents or to appear for their depositions as ordered by the Court and properly noticed by Defendants.

Counsel for Defendants shall serve a copy of this endorsed letter on Plaintiff, Xiaodong Fan, and Justin Lewis via email (at all of the email addresses referenced above), by **5 p.m. today** and shall file proof of service on the docket by **tomorrow**. Plaintiff, Mr. Fan, and Mr. Lewis shall have until **April 20, 2023**, to file any opposition. In the absence of any opposition by that deadline, Defendants are granted leave to file a formal motion seeking sanctions pursuant to Rule 37 by **April 27, 2023**; any opposition to such a motion shall be filed by **May 4, 2023**; and any reply shall be filed by **May 9, 2023**. The Clerk of Court is directed to terminate ECF No. 168.

Respectfully submitted,

/s/ Beixiao Liu

Beixiao Robert Liu, Esq.

SO ORDERED.



April 17, 2023